IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

MFA.No. 332 of 2002(B)
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AGAINST OPMV.151/1995 OF THE MOTOR ACCIDENT CLAIMS TRIBUNAL, WAYNAD, KALPETTA
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APPELLANT/PETITIONER

N.GOPALAN S/O.PARACHAN, AGED 49 YEARS,
RESIDING AT KANHARAVAYAL HOUSE,WARD NO.36,
VENGERI P.O.,CALICUT-10 -- (DIED)

ADDL.2. KUTTIPERACHI, W/O.LATE PERACHAN AGED 85
RESIDING AT KANHARAVAYAL HOUSE, WARD NO.36
VENGERI POST, CALICUT-10.

3. DEVI, W/O.LATE M.GOPALAN, AGED 55
RESIDING AT KANHARAVAYAL HOUSE, WARD NO.36
VENGERI POST, CALICUT-10.

4. SHEEBA, D/O.LATE M.GOPALAN, AGED 35
RESIDING AT KANHARAVAYAL HOUSE, WARD NO.36
VENGERI POST, CALICUT-10.

5. SHIBIJA, D/O.LATE M.GOPALAN, AGED 33
RESIDING AT KANHARAVAYAL HOUSE, WARD NO.36
VENGERI POST, CALICUT-10.

6. SHIBU, S/O.LATE M.GOPALAN, AGED 31
RESIDING AT KANHARAVAYAL HOUSE, WARD NO.36
VENGERI POST, CALICUT-10.

(ADDL.APPELLANTS 2 TO 6 ARE IMPLEADED AS LEGAL HEIRS OF THE DECEASED FIRST APPELLANT AS PER ORDER DATED 22.11.2007 IN I.A.NO.3028 OF 2007)

BY ADV. SRI.N.J.ANTONY

RESPONDENTS/RESPONDENTS
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1. A.V.JOSEPH, FATHER'S NAME NOT KNOWN,
ARAKKAL HOUSE,PADICHIRA P.O.,
PULPALLY,SULTHAN BATHERY,WAYANAD.

2. THE GENERAL MANAGER,K.S.R.T.C.,
THIRUVANANTHAPURAM.

R2 BY ADV. SRI.K.PRABHAKARAN,SC KSRTC

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 22.11.2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY & K. HEMA, JJ.

M.F.A.No. 332 of 2002

Dated this the 22nd day of November, 2007.

JUDGMENT

Koshy, J:

Appellant-claimant while riding a motor cycle was hit by a K.S.R.T.C. Bus driven by the first respondent and, as a result of which, he sustained serious injuries on 4.1.1995. He claimed a compensation of Rs.1,25,000/-. The Tribunal awarded only Rs.14,500 /- as compensation. The Tribunal found that the accident occurred due to the negligence of the first respondent driver of the K.S.R.T.C. bus. The only question of dispute is regarding the quantum of compensation.

2. Claimant was 49 years old at the time of accident. The Tribunal did not award any compensation for disability. To prove disability, claimant produced discharge certificate issued by the Orthopaedic Surgeon, Medical College Hospital, Calicut. The disability certificate was discarded by the Tribunal because the doctor who prepared certificate was not examined. But, the Tribunal did not make any effort to assess the disability. During pendency of the

appeal, claimant died and his legal representatives were impleaded. It is argued that the accident has got its impact on his death. Therefore, the injuries sustained in the accident and shock might have remote connection with his untimely death. There is no evidence to show that the death was the result of accident. There was shortening of Rt lower tibia ¾ inch. We are of the opinion that compensation should be awarded for at least 10% disability.

3. With regard to monthly income, Tribunal fixed as Rs.1000/- per month. As per 2nd schedule even for a non-earning person notional monthly income is Rs.1250/- (Rs. 15,000/- per year). Claimant was a 49 year old person. He was maintaining a family and was alleged to be employed as a shopkeeper. Considering the facts and circumstances of the case, we fix Rs.1800/- as the monthly income, though it was claimed that he was getting Rs.3000/- per month. Therefore, the compensation payable for 10% disability will be Rs.28080/- (Rs.1800x12x10/100x13). The Tribunal also found that he was unable to do anything for a period of three months. He was in the hospital for 31 days and he was under treatment for more than three months. Since we have taken Rs.1800/- as the monthly income, he was entitled to get Rs.2400/- for loss of earning. We

are of the opinion that just and reasonable was awarded on other heads. The additional compensation payable will be Rs. 15980/-. The above amount should be deposited by the 2nd respondent with 7.5% interest from the date of petition till its deposit over and above the decreed amount by the Tribunal. On deposit of the same, his wife is allowed to withdraw the amount.

Appeal is partly allowed.

Sd/-

J.B.KOSHY,
JUDGE.

Sd/-

K. HEMA,
JUDGE.

Krs.

J.B. KOSHY & K. HEMA, JJ.

M.F.A.No. 332 of 2002

Dated this the 22nd day of November, 2007.

JUDGMENT